

Outpatient Services Programs Workgroup Outpatient Civil Commitment Proposal

This document provides an overview of the Outpatient Services Programs Stakeholder Workgroup established under Senate Bill 882/House Bill 1267 of 2014 and includes a proposal for an outpatient civil commitment program in Maryland. More specifically, this document outlines: (1) the statutory requirements of Senate Bill 882/House Bill 1267; (2) the process for stakeholder input; and (3) a discussion of the outpatient civil commitment program the Department of Health and Mental Hygiene (DHMH) is proposing.

Statutory Requirements of Senate Bill 882/House Bill 1267

Senate Bill 882/House Bill 1267 of the 2014 required the Secretary of Health and Mental Hygiene to convene a stakeholder workgroup to examine the development of assisted outpatient treatment (also known as outpatient civil commitment) programs, assertive community treatment programs, and other outpatient services in the state; develop a proposal for a program in the State; and evaluate the dangerousness standard for involuntary admissions and emergency evaluations.

More specifically, the workgroup was required to develop a proposal that (1) best serves individuals with mental illness who are at high risk for disruptions in continuity of care; (2) respects the civil liberties of individuals to be served; (3) addresses the potential for racial bias and health disparities in program implementation; (4) is based on evidence and effectiveness of outpatient civil commitment programs, assertive community treatment programs, and other outpatient services programs with targeted outreach, engagement, and services in other jurisdictions; (5) includes a data-monitoring strategy; (6) promotes parity between public and private insurers; (7) addresses the potential for variance in program implementation among urban and rural jurisdictions; and (8) assess the cost of the program to DHMH and other state agencies, including the feasibility of security federal funding for services provided by the program. DHMH was also required to recommend draft legislation as necessary to implement the program included in the proposal.

Process for Stakeholder Input

The Department convened the Outpatient Services Programs Workgroup in May of 2014. Four of the eight workgroup meetings were devoted to the topic of outpatient civil commitment. At each meeting, the applicable provisions of Laura's Law – California's outpatient civil commitment law – were highlighted and contrasted to outpatient civil commitment laws in select states. The Department provided opportunities for stakeholder input at each meeting, and written comments could also be submitted for the Department's review after each meeting. The workgroup's schedule is outlined below:

- May 25, 2014: The workgroup discussed who should be the target demographic under an outpatient civil commitment program in Maryland and what criteria should be used when determining program eligibility. In order to facilitate conversation in this area the Department provided an overview of Laura's Law, and an overview of outpatient civil commitment criteria in select states.
- June 11, 2014: The workgroup focused on what outpatient services should be available under an outpatient civil commitment program and what program costs are for those services. In addition,

this meeting covered the Department's ability to secure federal funding for services and the potential costs to DHMH and other state agencies. The Department provided presentations on outpatient services currently available in the public mental health system; opportunities for federal funding; an overview of service provision under Laura's Law; and outpatient civil commitment services in select states.

- July 9, 2014: This meeting included discussion on what data needed to be collected under an outpatient civil commitment program and what Departmental reporting requirements should include. The workgroup also discussed how to avoid racial bias and health disparities and promote parity/access across the State between urban and rural jurisdictions. The workgroup was provided with presentations on reporting requirements under Laura's Law; program evaluation requirements in New York; and the Maryland Program Evaluation Act.
- July 23, 2014: This meeting was dedicated to the rights of the individuals and the potential role of the Judiciary, the Office of Administrative Hearings, and the Office of the Public Defender under an outpatient civil commitment program. The meeting included presentations from each of these agencies as well as a presentation on the rights' of the individual in select states.

Outpatient Civil Commitment Proposal

Using stakeholder input, the Department developed a proposal for outpatient civil commitment that is modeled after Laura's Law in California. Under the Department's proposal only the Secretary of Health and Mental Hygiene (or his/her designee) may file a petition for outpatient civil commitment with the Office of Administrative Hearings. By having a single petitioning entity, the Department believes this will help reduce health disparities in program implementation. Specified individuals may request the Department to conduct an investigation to determine whether a petition for outpatient civil commitment should be filed.¹ Based on these requests, the Secretary may file a petition with the Office of Administrative Hearings if he/she determines that it is likely that all the necessary elements for an outpatient civil commitment petition can be proven by clear and convincing evidence.

After an investigation is conducted the Secretary may only file a petition with the Office of Administrative Hearings if the subject of the petition has been examined by two mental health treatment providers. If an individual refuses to submit to an examination, there would be a process to initiate an emergency evaluation for outpatient civil commitment. Petitions filed with the Office of Administrative Hearings should include the facts that support the determination that the individual meets each criteria for outpatient civil commitment; a proposed treatment plan prepared by the service provider; and the certificates of the two examining licensed mental health treatment providers.

Criteria

¹The following individuals may request the Department to conduct an investigation: (1) any adult who resides with the person who is subject of the petition; (2) any adult, who is the parent, spouse, sibling, or child of the person who is the subject of the petition; (3) the director of a hospital in which the person who is the subject of the petition is, or has been, hospitalized; (4) a licensed mental health treatment provider who is supervising or providing, or has supervised or provided, treatment of the person who is the subject of the petition; (5) a peace officer, parole officer, or probation officer assigned to supervise the person who is the subject of the petition; or (6) a member of the Judiciary who personally has observed the individual who is the subject of the request, or the individual's behavior.

The vast majority of workgroup participants indicated that they were supportive of the outpatient civil commitment criteria outlined in the first reader version of Senate Bill 831/House Bill 767 of 2014. Criteria under Senate Bill 831/House Bill 767 included the following provisions: (1) the individual must be an adult; (2) the individual must have a mental disorder; and (3) the individual must be capable of surviving safely in the community with appropriate outpatient treatment and support; (4) the individual, if not adherent to outpatient treatment, is likely to deteriorate such that he or she will present a danger to the life or safety of the individual or others; (5) the individual must be unlikely to adequately adhere to outpatient treatment on a voluntary basis, as demonstrated by the individual's prior history of nonadherence to voluntary treatment; or specific characteristics of the individual's clinical condition that prevent the individual from making rational and informed decisions regarding mental health treatment; and (6) outpatient civil commitment must be the least restrictive alternative appropriate to maintain the health and safety of the individual.

Despite this consensus, a number of stakeholders highlighted the role of an individual's capacity to make treatment decisions as it relates to program criteria. The Department concurs with this sentiment and believes nonadherence to treatment should be further defined to incorporate lack of capacity. Furthermore, the Department is particularly interested in targeting outpatient civil commitment services to individuals who have frequent contact with the State's psychiatric facilities. While hospitalized and adherent to treatment, their conditions improve. However, when those individuals return to the community, many refuse to engage in treatment, and their condition deteriorates. Consequently, individuals with serious mental illness who refuse to engage in treatment may experience homelessness, frequent hospitalizations, increased contact with law enforcement, and incarceration.

An outpatient civil commitment program targeted on this population would improve continuity of care by decreasing interruptions in treatment, stabilizing the individual in the least restrictive environment, and reducing preventable hospitalizations, including inpatient civil commitments. Therefore, the Department proposes the following criteria:

- (1) The individual is an adult;
- (2) The individual has a mental disorder as defined by Health- General § 10-101;
- (3) The individual is not providing for or meeting the needs of daily living in the community without supervision, based on a clinical determination;
- (4) At least twice within the past 48 months, the individual has been involuntary admitted to a facility or Veteran's Administration Hospital under Title 10, Subtitle 6, Part III of the Health-General Article;
- (5) The individual has been offered an opportunity to participate voluntarily in treatment but declines to do so;
- (6) In view of the individual's treatment history and current behavior, the individual is in need of mandatory outpatient treatment in order to prevent deterioration that would be likely to result in the individual meeting the criteria for involuntary admission under Health-General § 10-617;
- (7) The individual is likely to benefit from outpatient treatment that will help protect the individual from interruptions in treatment, relapses, or deterioration of mental health; and
- (8) There is no appropriate and feasible less restrictive alternative.

Mandated Services

The majority of stakeholders noted that intensive case management or Assertive Community Treatment should be a mandated service under an outpatient civil commitment program. Nontraditional outpatient services, such as mobile treatment were also recommended. The Department concurs with stakeholder feedback and recommends that an outpatient civil commitment program include either case management or Assertive Community Treatment Services to ensure care coordination. The Department also advises that a treatment plan may include: medication; periodic blood tests or urinalysis to determine compliance with prescribed medications; individual or group therapy; day or partial day programming activities; education and vocational training or activities; if an individual has a history of substance use disorder, alcohol or substance use disorder treatment, counseling, and periodic tests for the presence of alcohol, illegal drugs, or prescription drugs; supervision of living arrangements; and peer support. Moreover, the Department iterates that any other services necessary to treat the individual's mental illness and assist the individual in living and functioning in the community should be provided. Services to attempt to prevent a relapse or deterioration that may be reasonably predicted to result in suicide or the need for hospitalization may also be provided.

Civil Liberties of Individuals to Be Served

The Department recognizes that any outpatient civil commitment program must include clear civil liberty protections to ensure that individuals' rights are safeguarded throughout each stage of the process. Therefore, the Department recommends that legislation establishing an outpatient civil commitment program in Maryland include language explicitly detailing the rights of individuals that are subject to a petition for outpatient civil commitment.

These rights should include: the right to retain counsel, or if the individual qualifies, use the services of a court-appointed public defender; the right to receive notice of the Department's petition and notice of the hearing; the right to receive a copy of the results of the investigation of the Secretary; the right to present evidence, call witnesses, and cross-examine adverse witnesses at the outpatient civil commitment hearing; the right to be informed of the right to judicial review of the Administrative Law Judge's decision; the right not to be involuntarily committed solely for failure to comply with an order; the right to be present at a hearing, unless the individual waives that right; and the right to receive treatment in the least restrictive setting deemed appropriate and feasible.

Further, the proposal should also list those actions that will not be considered a refusal to comply with a treatment order. Those actions include: a willingness to take medication as required under an order, but a reasonable disagreement about the type or dosage of the medication; an inability to obtain access to appropriate treatment because of inadequate health care coverage or an insurer's refusal or delay in providing coverage for the treatment; or the inability of an individual who is in the custody of the Department of Public Safety and Correctional Services or a local detention center to participate in treatment.

Reporting

Stakeholder feedback on data and reporting requirements under an outpatient civil commitment program was diverse. However, original reporting requirements under Kendra's Law – New York's outpatient civil commitment law – and requirements included in the 2005 reauthorization of the law were cited by several stakeholders as an appropriate starting point when developing reporting requirements in

Maryland. Additional data identified by stakeholders included information on the number of petition requests filed by non-providers; an individual's living situation pre and post program participation; quality of life assessments; demographic information such as race; and treatment outcomes, including medication outcomes. Stakeholders also noted that having a program evaluation conducted by an entity other than the Department would be beneficial.

Based on these comments the Department proposes the submission of an annual report to the General Assembly summarizing the number of orders issued during a 12-month period. For individuals that were the subject of an order during that time span the Department should report on the number of individuals who: (1) maintained contact with the treatment system; (2) maintained housing; (3) participated in employment services; (4) were hospitalized; and (5) came in contact with local law enforcement. Demographic information – including race, gender, income, education and disability – by jurisdiction should also be reported. Costs to administer the program, at DHMH, as well as costs to other agencies should also be reported. Additional reporting requirements should also include adherence to treatment plans; treatment outcomes, including medication outcomes; substance abuse by individuals who are the subject of an order; type, intensity, and frequency of treatment that are included in treatment plans included in orders; satisfaction with outpatient civil commitment by individuals receiving services and by their families when relevant; and the extent to which enforcement mechanisms are used and the outcome of the enforcement mechanism. In addition to annual reporting, the Department proposes that the program undergo a Sunset Evaluation in accordance with the Maryland Program Evaluation Act.